

MCE

(Responses in RED)

January 30, 2014

Dr. Karl Brooks
Regional Administrator, Region 7
Environmental Protection Agency
11201 Renner Blvd.
Lenexa, KS 66219

Re: West Lake Landfill Questions for EPA Region 7

The Missouri Coalition for the Environment (MCE) understands that EPA Region 7 agreed to assume lead jurisdiction over the isolation barrier on September 20, 2013 in an agreement with Attorney General Koster and Republic Services because the proposed isolation barrier is within EPA Region 7's geographic jurisdiction and the possibility of encountering radioactive material was possible. The isolation barrier is intended to keep the smoldering landfill fire from encountering radioactive wastes illegally dumped at the landfill in 1973. Below are questions from MCE and concerned community members:

- 1) Has EPA Region 7 considered the removal of the radioactive wastes due to the threat of the ongoing smoldering landfill fire? **EPA is re-evaluating alternatives and will issue a new proposed plan with a new public comment period.**
- 2) Could Attorney General Koster have required Republic Services to remove the radioactive wastes through legal action? **Questions regarding State authorities should be directed to the State.**
- 3) Does the State of Missouri have legal authority over the disposition of the radioactive wastes? **Questions regarding State authorities should be directed to the State.**
- 4) Did EPA Region 7 consider other options that would ensure the smoldering fire would not reach the radioactive wastes other than the isolation barrier plan negotiated between the State of Missouri and Republic Services? If yes, please describe the process and/or provide documents related to the options considered before deciding that an "isolation barrier" will be sufficient to protect the radioactive wastes from the smoldering landfill fire. **The contingency plans for dealing with the subsurface smoldering event (SSE) were defined in the Missouri Attorney General's order with Republic. As the Missouri DNR is the lead regulatory agency for addressing the SSE, any "other options" would be specified by MDNR or the Missouri AG.**
- 5) What analysis has EPA Region 7 conducted to determine how the contaminants at West Lake would be affected by elevated temperatures in the landfill, specifically, temperatures above 140 degrees Fahrenheit? **EPA internal experts, as well as the U.S. Geological Survey (USGS), are evaluating the current subsurface smoldering event (SSE) data and making recommendations.**

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6) Does EPA Region 7 have a contingency plan in the event of the isolation barrier plan failing or a smoldering fire starting within OU-1? The contingency plans for dealing with the subsurface smoldering event (SSE) were defined in the Missouri Attorney General's order with Republic. As the Missouri DNR is the lead regulatory agency for addressing the SSE, any other contingencies would be specified by MDNR or the Missouri AG.

7) Will EPA Region 7 please make available all documents submitted by the PRP's, their contractors, and other agencies that are currently under review as it relates to the isolation barrier plan and its implementation? The Missouri Dept. of Natural Resources was able to post documents within days upon receipt. This effort allowed MCE and concerned citizens to submit comments related to our concerns. As appropriate, and consistent with EPA's legal authorities and limitations (see EPA's response to question no. 8 below), documents will be made available to the public on EPA's web page.

8) Are there any laws that preclude EPA Region 7 from posting documents under review? The Freedom of Information Act, 5 U.S.C. § 552, (FOIA) provides public access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine statutory exemptions. While it is EPA's practice to make publically available any agency record that is not subject to an exemption, the determination to release a record must be made by EPA on a record-by-record basis, consistent with the requirements of the FOIA.

9) Does EPA Region 7 have the legal authority to request that the U.S. Army Corps of Engineers assume lead jurisdiction of the West Lake Landfill? Sites involving radioactive materials resulting from facilities that supported Manhattan Engineer District (MED) and early U.S. Atomic Energy Commission (AEC) activities may be eligible to be addressed by the U.S. Department Energy's (DOE) Office of Legacy Management through the Formerly Utilized Sites Remedial Action Program (FUSRAP). FUSRAP remedial activities are administered and executed by the U.S. Army Corps of Engineers (USACE). Site entry into FUSRAP occurs through legislation or by the DOE determining that the site is eligible through the application of selection and exclusion criteria. Congress has directed the USACE to conduct remedial actions at FUSRAP sites in a manner consistent with the Comprehensive Environmental, Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 – 9675, and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, the authorities and requirements that EPA is operating under as it works toward the remediation of West Lake Landfill. EPA has not requested that DOE or the USACE assume the lead for West Lake Landfill. More information on DOE's FUSRAP program may be obtained through <http://www.lm.doe.gov/default.aspx?id=866> for inclusion.

10) Does EPA Region 7 have the ability to ask the U.S. Army Corps of Engineers to perform site studies and evaluation of the West Lake Landfill? Yes. However, EPA has adequate in-house expertise and assistance from the USGS and other partners to evaluate the situation and select a remedy, and does not foresee a need to involve USACE.

11) Will EPA Region 7 contract with the Army Corps of Engineers FUSRAP (similar to how EPA Region 7 contracted the USGS on groundwater issues) to help characterize the radioactive wastes at West Lake Landfill because the St. Louis Army Corps of Engineers FUSRAP headquarters is already familiar with the contaminants, is located near the site where the radioactive wastes originated at Latty Ave., and has on-site laboratory facilities? **No. EPA has adequate in-house experience and assistance from the USGS and other partners to evaluate the situation and select a remedy.**

12) Why has EPA Region 7 not tested for radioactivity throughout the landfill? **EPA's investigations began in the radiologically-contaminated areas identified by the Nuclear Regulatory Commission and proceeded until the limits of these areas were defined well enough to support the remedy evaluation and selection process (the Feasibility Study and the Record of Decision).**

13) Given that the Gamma Cone Penetration Test (GCPT) found radioactivity in areas believed to be not contaminated, does EPA Region 7 plan to test the entire landfill in order to know with certainty exactly where radioactive wastes are present? **EPA anticipates that the remedial design phase for whichever remedy is selected will involve a higher density of sampling points along the perimeter of the radiologically-contaminated areas, as the level of detail needed for the design is greater than is needed for remedy selection. The GCPT data will be used in any future remedy selection processes.**

14) Would EPA Region 7 be in charge of radioactive wastes found outside of OU-1? **(Hoefer to answer)**

15) Given that no formal commenting period was allowed when the isolation barrier was negotiated between Republic Services and EPA Region 7, do community members, businesses, or organizations have a legal right to comment on the isolation barrier as negotiations between EPA Region 7 and Republic Service unfold regarding the exact details? **(Hoefer to answer)**

16) Did EPA Region 7 seek/allow MDNR to comment on Phase 1, Phase 1b, Phase 1c, or Phase 2 of the isolation barrier plan? **Yes, MDNR did comment on these work plans.**

17) Did DNR suggest establishing background radiation levels for the GCPT at an offsite location? **Questions regarding State involvement should be directed to the State.**

18) Did EPA Region 7 establish background radiation levels for the GCPT at an offsite location? If yes, please cite where this information can be found. **No, on-site background values representative of the specific soils and wastes in the area were established.** [Have Chuck weigh in on Questions 18-20]

19) It's our understanding that background radiation was determined within the landfill. Our concern is that it will skew real background levels of radioactivity given that EPA

Region 7 is now finding radioactivity in areas where it was presumed to be "clean." Will EPA Region 7 establish background radiation levels for the GCPT offsite in an area that are upstream, upwind and distant from the West Lake Landfill? **No. The on-site background levels are appropriate for determining the presence or absence of RIM for the purposes of the qualitative screening done with the GCPT instrument.**

20) Did EPA Region 7 look for historical documents regarding the background level of radiation for St. Louis, Missouri before conducting the GCPT? **No. The on-site background levels are appropriate for determining the presence or absence of RIM for the purposes of the qualitative screening done with the GCPT instrument.**

21) How does EPA Region 7 classify the work related to the isolation barrier? Is it a remedial action? **The installation of the isolation barrier is a removal action, not a remedial action.**

22) Is EPA Region 7 able to request a Health Hazard Evaluation from the National Institute of Occupational Health and Safety at the West Lake Landfill? If yes, will EPA Region 7 request a Health Hazard Evaluation in order to ensure the full safety of onsite employees? The emergence of radioactive material outside of the fence around OU-1 Area 1 within the landfill is of serious concern and because EPA Region 7 has not tested the entire landfill, radioactive material could be located elsewhere. The precautionary principle should be considered in order to protect human health for the landfill workers, nearby residents, and employees of nearby businesses. **ATSDR to answer?**

Thanks,
Ed Smith